IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 276 of 2006

Date of decision : 20.7.2006

Surjeet Kaur **……Appellant.**

Versus

Bharat Singh Verma and others **….. Respondents**

Coram

The Hon'ble Mr. Justice : **Surjit Singh, Judge.**

Whether approved for reporting?

For the appellant: Mr. S.R. Sharma, Advocate.

For respondents : Nemo.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Bhoora, predecessor of respondents No. 1 to 11, filed a suit for permanent prohibitory and mandatory injunction, restraining the present appellant, who was impleaded as defendant No. 2 and proforma respondent No. 12 Amarjit Singh, who was impleaded as defendant No. 1, from causing any interference in his possession over land, measuring one Bigha, bearing Khasra No. 488/21, alleging that he was owner in possession of the suit land. The appellant and proforma respondent No. 12 contested the suit by filing separate written statements. The appellant in the written statement nowhere claimed specifically or even by implication

Whether reporters of Local Papers may be allowed to see the Judgment?

That she had any right, title or interest in the subject matter of the suit, but took a vague plea that the plaintiff was unaware of the boundaries of his property and that she was not making or attempting to make any encroachment upon the suit land and that she was in possession of her own property and major portion of her property had already been built upon by her.

3. Trial Court framed various issues, based on the pleadings of the parties, and ultimately concluded that plaintiff Bhoora, now represented by his legal representatives, who are respondents No. 1 to 11 herein, was the owner of the property and the defendant / appellant and proforma respondent No. 12 had no right, title or interest in the suit land and hence the suit was decreed and the defendants were restrained from causing any interference in the suit land. Appellant filed an appeal in the Court of the learned District Judge, which stands dismissed. Now, the appellant has come to this Court.

4. Learned counsel for the appellant submits that as a matter of fact appellant's husband Dharjit Singh had purchased the suit land from the previous owner Gian Singh and that after the purchase, she came in possession and hence the plea of deceased plaintiff Bhoora that he was owner in possession, could not have been upheld and decree could not have been passed in his favour.

5. I have perused the record. I have also looked into the copy of the written statement filed by the appellant, which is available with the learned counsel for the appellant.

6. The appellant nowhere took the plea that her predecessor had purchased the suit land or any part of it from Gian Singh. A perusal of the record shows that initially Gian Singh, his brother Hasee and their mother Lachhmi were joint owners in possession of the land bearing Khasra No.

121, measuring 2 Bighas 4 Biswas. The suit land is part of the said land. Bhoora, deceased plaintiff, was a tenant on the entire land bearing Khasra No. 121, on payment of rent. Gian Singh, it appears, sold his share in the suit land to various persons, because there is reference to at-least two mutations in the Jamabandi for the year 1965-66. The appellant tried to show during the course of trial that her husband Dharjit Singh had purchased the suit land from Gian Singh. She proved on record the sale deed executed by Gian Singh in favour of Dharjit Singh on 12.12.1967. There is a mention in the judgment of the trial Court that a copy of mutation order Ext. PX, proved on record by the plaintiff, reads that the mutation entry, on the basis of the sale deed dated 12.12.1967, had been rejected with the observation that Gian Singh had already disposed of his entire share in the suit land. In any case, as already noticed, the appellant in the written statement did not take the plea that her predecessor had purchased any portion of the suit land from Gian Singh. Jamabandi for the year 1965-66, a reference to which has been made here-in-above, suggests that the total area of Khasra No. 121, of which the suit land is a part, was two Bighas 4 Biswas. May be that the sale deed, relied upon by the appellant, pertains to some other portion of old Khasra number 121 and not to suit land, which measures one Bigha and is now described by a separate number, i.e. 488/477/121. There is very strong reason for making this observation. The same is the omission in the written statement of the appellant that she was owner of the suit land on the strength of the said sale deed executed in favour of her husband.

7. No other point has been urged.

8. From the above discussion it is clear that no substantial question of law arises. Hence the appeal is dismissed.

July 20, 2006 (BC) **(Surjit Singh)**
Judge